

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN, MILWAUKEE DIVISION**

ESTATE OF RAMON A. ECHEVERRIA LOZA,)	
By the Special Administrator to the Estate,)	
ROCCIO A. GUERRERO, and ROCCIO A.)	
GUERRERO, individually)	
	No.
Plaintiffs,)	
)
PIONEER SPECIALTY INSURANCE)	Defendants Demand
COMPANY, a foreign corporation)	Trial by Jury.
)
Involuntary Plaintiff,)	
)
vs.)	
)
H & P TRUCKING, LLC, a foreign limited liability)	
company, JEREMY J. PHELPS, and OWNER)	
OPERATOR INDEPENDENT DRIVERS)	
ASSOCIATION RISK RETENTION GROUP,)	
INC., a foreign corporation)	
)
Defendants.)	

NOTICE OF REMOVAL

NOW COME Defendants, H & P TRUCKING, LLC, JEREMY J. PHELPS, and OWNER OPERATOR INDEPENDENT DRIVERS ASSOCIATION RISK RETENTION GROUP, INC. (“OOIDA RRG”), by their attorneys, ORLEANS CANTY NOVY, LLC, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and hereby file their Notice of Removal of the cause entitled *ESTATE OF RAMON A. ECHEVERRIA LOZA, ROCIO A. GUERRERO, and PIONEER SPECIALTY INSURANCE COMPANY v. H & P TRUCKING, LLC, JEREMY J. PHELPS, and OWNER OPERATOR INDEPENDENT DRIVERS ASSOCIATION, RISK RETENTION GROUP, INC.* which was filed in the Circuit Court of Racine County, Wisconsin under case number 2021 CV 872. As their grounds for removal, Defendants state as follows:

1. Plaintiffs, ESTATE OF RAMON A. ECHEVERRIA LOZA and ROCIO A. GUERRERO (“Plaintiffs”), commenced an action against the above-referenced Defendants on or about March 25, 2021, by filing Plaintiff’s Complaint in the Circuit Court of Racine County, Wisconsin under case number 2021 CV 872. (*See* Plaintiffs’ Complaint attached hereto and made a part of this Notice as Exhibit A).

2. 28 U.S.C. § 1332 provides that:

The District Court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between:

- (1) citizens of different states;
- (2) citizens of a State and citizens or subjects of a foreign state . . .

3. Accordingly, this action is removable under 28 U.S.C. §1441, which provides:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

4. These statutory requirements are satisfied for the reasons explained below, and therefore, this Court has subject-matter jurisdiction over this action.

COMPLETE DIVERSITY OF CITIZENSHIP EXISTS

5. Upon information and belief and as alleged in the Complaint, prior to his death, Ramon A. Echeverria Loza resided at 1928 North 23rd Street, Wauwatosa, Milwaukee County, Wisconsin 53205. (*See* Exhibit A ¶2), and his estate has been established in the State of Wisconsin. Therefore, Plaintiff, ESTATE OF RAMON A. ECHEVERRIA LOZA, is a citizen of Wisconsin.

6. Upon information and belief and as alleged in the Complaint, Plaintiff, ROCIO A. GUERRERO, resides at 1928 North 23rd Street, Wauwatosa, Milwaukee County, Wisconsin

53205. (*See Exhibit A ¶ 3*); she was the wife of the decedent, Ramon A. Echeverria Loza; and she has been appointed as the special administrator of the Estate of Ramon A. Echeverria Loza. Therefore, Plaintiff, ROCIO A. GUERRERO, is a citizen of Wisconsin.

7. Involuntary Plaintiff, PIONEER SPECIALTY INSURANCE COMPANY, is a Minnesota corporation with its principal office located at 4700 West 77th Street, Edina, Hennepin County, Minnesota 55435. (*See Exhibit A ¶ 4*). Therefore, Plaintiff, PIONEER SPECIALTY INSURANCE COMPANY, is a citizen of Minnesota.

8. Defendant, H & P TRUCKING, LLC, is a limited liability company formed and existing under the laws of the State of Illinois. H & P TRUCKING, LLC has its principal place of business in Saint Charles, Illinois. Justin Rivard, who resides at 1535 Forest Ridge Road, St. Charles, DuPage County, Illinois 60174, is the sole member of H & P TRUCKING, LLC. (*See Declaration of Justin Rivard attached hereto and made a part of this Notice as Exhibit B*). Therefore, Defendant, H & P TRUCKING, LLC, is a citizen of Illinois.

9. Defendant, JEREMY J. PHELPS resides at 221 West Park Street, Amboy, Lee County, Illinois 61310. (*See Exhibit A ¶ 6*). Therefore, Defendant, JEREMY J. PHELPS, is a citizen of Illinois.

10. Defendant, OOIDA RRG, is a corporation formed and existing under the laws of the State of Vermont and maintains its principal place of business at 1 NW OOIDA Drive, Grain Valley, Jackson County, Missouri 64029. (*See Exhibit A ¶ 7*).

11. Consequently, complete diversity of citizenship exists between Plaintiffs and Defendants.

AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00

12. Plaintiffs' Complaint at Law is an action for civil damages, sounding in negligence arising from a tractor-trailer incident which allegedly resulted in the death of Ramon A. Loza on Interstate 94 in Racine County, Wisconsin.

13. In the Complaint at Law, Plaintiffs seek an unspecified amount of damages in excess of \$10,000.00, which is the jurisdictional minimum; however, it is readily apparent from the face of the complaint that more than \$75,000 is in controversy because the complaint alleges:

- Loza died because of an impact between his body and tractor-trailer that Phelps was driving on Interstate 94 in Racine County, Wisconsin (Complaint, ¶ 9);
- The Estate has “incurred extensive funeral and burial expenses as well as other pecuniary losses, all to its damage . . .” (Complaint, ¶ 11);
- Because of Phelps’ negligence, Loza “suffered an extreme fear in contemplation of death and great bodily harm including death and extreme conscious pain and suffering prior to death . . .” (Complaint, ¶ 11);
- Guerrero and Loza had been married “[f]or a long time prior to the accident” and she suffered the loss of his “love, comfort, society and companionship” (Complaint, ¶¶ 12, 20);
- Loza “was in good health and fully capable of performing, and did actually perform, his duties as a husband, lover, father, companion and caretaker of his household, his wife and his children” (Complaint, ¶ 21);
- Guerrero and her children have been deprived of Loza’s services and companionship because of Loza’s death.

14. In paragraph 12 of the Complaint, Plaintiffs allege that they have lost the earning capacity of decedent Loza, and counsel for Plaintiffs' has provided Defendants' counsel with an expert's report claiming loss of earning capacity at approximately \$1.6 million.

15. The State Court action is a cause for civil damages by Plaintiffs relative to the death of Ramon A. Echeverria Loza. Therefore, although not specifically demanded on the face of the Complaint at Law, Defendants make a reasonable conclusion based on the allegations of the Complaint at Law and claims by Plaintiff's counsel that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

16. If Plaintiffs succeed on all their claims and Defendants fail on all their defenses, it is more likely than not that Plaintiffs' damages will exceed \$75,000.00.

17. Therefore, the amount in controversy exceeds \$75,000.00.

REMOVAL IS TIMELY

18. None of the Defendants have been served. However, Defendants have learned of the Complaint, are removing this action within 30 days of learning of the Complaint, and intend to defend this action.

19. Pursuant to 28 U.S.C. § 1446, this Notice of Removal is timely as it is being brought within 30 days of Notice of the Lawsuit and prior to service on Defendants.

ALL DEFENDANTS CONSENT TO REMOVAL

20. Pursuant to 28 U.S.C. §1446(a), this Notice of Removal of Civil Action is signed in conformance with Federal Rule of Civil Procedure 11.

21. Written notice of this Notice of Removal has been served by mail and *e-mail* on Plaintiffs and a copy of this Notice of Removal will be electronically filed with the Circuit Court of Racine County, Wisconsin.

WHEREFORE, Defendants, H & P TRUCKING, LLC, JEREMY J. PHELPS, and OOIDA, file their Notice of Removal, removing the State Court action from the Circuit Court of Racine County, Illinois to the United States District Court for the Northern District of Illinois.

Defendants Demand Trial by Jury.

Respectfully submitted,

H & P TRUCKING, LLC, JEREMY J. PHELPS, and
OOIDA RRG, Defendants.

By: /s/ Jason Orleans
One of Their Attorneys

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